

## REMARKS

The foregoing amendment is provided to remove issues for appeal and to present rejected claims in better form for consideration on appeal, rather than to avoid prior art.

Applicants respectfully requests reconsideration of this application as amended. As of the Office Action mailed on April 9, 2008, Claims 1-23 are pending. Claims 1-7, 9-11, 15-21 and 23 are rejected. Claims 8, 12-14 and 22 are objected to. Claims 12 and 22 are amended by rewriting them into independent form.

In accordance with the Examiner's phone call of December 29, 2008, which

- (1) Alleges that the Amendment submitted December 5, 2008 was not compliant and would not be entered because claims were amended; and
- (2) Requires a correction of the Appeal Brief filed December 5, 2008;

Applicant is therefore beleived to have 1 month or 30 days from the notification of non-compliance to file an amended breif. Accordingly, applicant respectfully submits timely corrections herewith the following remarks.

As of the Office Action mailed on April 9, 2008, Claims ~~1-3, 5-7 9-10, 15-17, 18-~~ 21 and 23 stand rejected under 35 USC § 102(e) as allegedly being anticipated by US Patent 6,167,289 (Ball). Applicant has not amended the rejected claims and has presented arguments with regard to the rejections of the Office Action in the accompanying Corrected Appeal Brief (and in the previously submitted Appeal Breif).

As of the Office Action mailed on April 9, 2008, Claims 4 and 11 stand rejected under 35 USC § 103(a) as allegedly being unpatentable over Ball in view of US Patent 4,639,657 (Friedrich), and over Ball, respectively. Applicant has not amended the rejected claims and has presented arguments with regard to the rejections of the Office Action in the accompanying Corrected Appeal Brief (and in the previously submitted Appeal Breif).

In the Office Action mailed on April 9, 2008, the Examiners states that Claims 8, 12-14 and 22 are objected to for being dependent from a rejected base claim and would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 12 and 22 are amended by rewriting them into independent form including all the limitations of the base claim and any intervening claims. Therefore Applicant respectfully submits that Claims 12 and 22 are presently allowable.

The foregoing amendments require no new arguments on the part of the Examiner, are permissible under 37 CFR 41.33 and may be admitted on or after the date of filing a brief pursuant to 37 CFR 41.37:

- (1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or
- 2) To rewrite dependent claims into independent form.

Accordingly, Applicant respectfully submits that the present amendment may be admitted under 37 CFR 41.33.

Applicant also respectfully submits that since prosecution was reopened following the appeal brief filed February 27, 2008, by the Office Action mailed on April 9, 2008, Applicant was entitled to initiate a new appeal by filing of the Notice of Appeal on October 29, 2008 and of an Appeal Brief pursuant to 37 CFR 41.37 on December 5, 2008.

It is believed that the question of whether a brief complies with 37 CFR 41.37 is a matter within the jurisdiction of the Examiner and the Board. Applicant therefore, respectfully submits an Amended Appeal Brief herewith for the Examiner's consideration and pursuant to the Examiner's phone call of December 29, 2008. Applicant believes that it complies with 37 CFR 41.37.

Accordingly, Applicant respectfully requests the Examiner enter the present amendment for consideration of Claims **1-7**, 9-11, **15-17** and **18-21** on appeal.

Authorization is hereby given to charge our Deposit Account No. 50-0221 for any charges that may be due.

Respectfully submitted,

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/Lawrence M. Mennemeier/  
Lawrence M. Mennemeier  
Reg. No. 51,003

INTEL CORPORATION  
c/o INTELLEVATE LLP  
P.O. Box 52050  
Minneapolis, MN 55402  
(408) 765-2194